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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,416	03/15/2004	Paul C. Mioduski	62815.00002	1961

7590 11/29/2006

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EXAMINER

GIBSON, ROY DEAN

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 11/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/801,416

Applicant(s)

MIODUSKI ET AL.

Examiner

Roy D. Gibson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2006.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 13-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12, 23 and 24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10/20/04 & 2/24/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-8 and 23-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, in line 3, "low frequency field" is not found in the Specification in support of this recitation;

in line 4, the examiner suggests deleting "and", since it also occurs in line 6;

in line 12, replace the period with a semicolon because a claim can only be a single sentence, therefore, line 13 should begin with "the" (small "t");

in line 14, "the region" is recited: there is insufficient antecedent basis for this limitation in the claim, and the examiner suggests the word "region" should be inserted in an line above this occurrence or changed to "a region": also what is the region ?, clarification is required;

in claim 2, in line 2, the examiner suggests inserting "and" after "temperature";

in claim 4, in line 4, "spec" should be changed to "specification";

in claim 5, in line 4, it is unclear what " controlled temperature source" means and this phrase does not appear in the Specification and is, therefore, not enabled by the Specification;

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in claim 6, in line 2, , the examiner suggests inserting "and" after "temperature" and changing "the preferred temperature profile" to "a preferred temperature profile" to correct a lack of antecedent problem;

claim 7, depends from claim 5, therefore in line 4, "the temperature profile" lacks antecedent basis: the examiner suggest changing the dependency to claim 6 to correct this.

claims 23-24 appear to be limitations of claim 6, though this is not recited. The examiner suggest that each claim should begin as follows; "The device of claim 6, whereby" - - -.

Clarification is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1-8 and 13-24 are rejected under 35 U.S.C. 102(a) as being anticipated by Manker et al. (2003/0023238 A1).

As to claim 1, Manker et al. discloses a method for operating a hyperthermia treatment system essentially as claimed with the sensor being placed or positioned internally adjacent the treatment region, the "parameter" related to temperature being

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the "rate of change" of the temperature (see [0015, 0016, 0024-0026, 0028-0031, 0033, 0036-0053]).

Further to claims 2-4, the "rate of change" of the temperature is a time function [0024] such as 1 deg. per 0.5 minutes to 1 deg. per 15 minutes.

Further to claims 5-8, Manker et al. discloses the device for performing hyperthermia treatment comprising:

a heat source (RF generator) for providing localized heat for the hyperthermia treatment;

a controlled temperature source generated from a battery driven PC controlled device (assumed to be a reference correction for a thermocouple);
a temperature sensor (4) that is part of a feedback loop for continuously monitoring of temperature; and

a processor (6) that determines whether to continue the hyperthermia treatment based on temperature (rate of change of the temperature) that is within an allowable range of operation of the device (see [0015, 0016, 0024-0026, 0028-0031, 0033, 0036-0053]).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Manker et al. Although Manker et al. fail to disclose a plurality of tests as claimed, the examiner maintains that these claims appear to be "typical" performance/calibration test methods prepared by a manufacture of medical equipment to assist the user in determining if the equipment is operating as specified before the process before the user proceeds with the medical treatment, i.e., that a typical operating manual for the equipment would provide the claimed method, as is well known in the art.

Conclusion

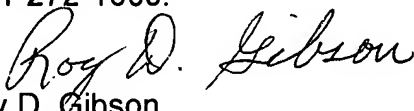
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kannenberg et al. (6,612,217) disclose all elements of the device and also the method as claimed, thus anticipating claims 1-8 also.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roy D. Gibson whose telephone number is 571-272-4767. The examiner can normally be reached on Tu-Th, 7:30 am-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on 571-272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Roy D. Gibson
Primary Examiner
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November 27, 2006